

Submission on consultation document: *Implementation of the Trans-Pacific Partnership Intellectual Property Chapter*

Your name and organisation

Name	Flash Langley
Organisation	

This preliminary submission focuses on Technological protection measures.
Check for subsequent superseding or supplementary submissions (such as early April 2016).
In subsequent submission, I will seek greater and deeper coverage, necessary for context.

I have some interest in the other areas as well. Due to time constraints, they are not part of this preliminary submission.

I would like to make an oral presentation.
I also welcome inclusion in group discussion sessions.

Responses to consultation document questions

1 Have the overarching objectives been framed correctly for this policy process? If not, what would be more appropriate objectives?

No.

I understand the timing and context of this rushed targeted consultation, which gives primary importance of implementing TPP.

This process is blinkered -- by placing greater importance on complying with the TPP. This fundamentally flawed process is not considering how the potential obligations will fit in with a productive information society; competition policy; and privacy policy. Also flexibility, efficiency, and effectiveness.

It cannot be assumed that existing is a balance of users and innovators, compared with authors and rights holders. The needs of society, and users, and often not respected or unilaterally contracted-out of.

Need fair use exception.

Also consider taxation of the further copyright extension.

**Flash Langley PRELIMINARY Submission on MBIE consultation document:
Implementation of the Trans-Pacific Partnership Intellectual Property Chapter**

With regards to Technological protection measures:
 Incorrect problem identification; incorrect solutions assessment. Lacking consideration of how to best promote a choice in business models, rather than seek to defend incumbents.
 Technological protection measures have no place in Copyright; are counter-productive (compared with better business models that best meet users needs); and do not respect Exceptions and Limitations. Nor are legislative / regulatory / legal methods that effective either. Need functioning markets, together with enforceable safeguards to protect user rights.
 TPMs circumvention can be costly or not feasible.

Technological protection measures

2	<p>Do you agree with the exceptions or limitations proposed for TPMs? What would be the impacts of not providing these exceptions? Please be specific in your answers.</p> <p>Generally yes; though some not expansive enough. I regard the left side as the exception; and the right side as non-exclusive illustrations to ease comprehension. I will pick at those another time. [Also would be simpler to reverse the prohibitions and exceptions; confined to only a small set of prohibitions.]</p>
3	<p>Do you agree that the exceptions proposed for TPMs should apply to both prohibitions (i.e. circumventing a TPM and the provision of devices or services that enable circumvention)? Why / why not?</p> <p>Both types of TPMs are counter-productive.</p>
4	<p>Do you agree that, if our proposals are implemented, the current exception allowing a qualified person to circumvent a TPM that protects against copyright infringement to exercise a permitted act under Part 3 would no longer be required? Why / why not?</p> <p>TPMs should not exist in the first place. If they are used, should be removed. Not solely by specified persons.</p>
5	<p>Are there any other exceptions or limitations to the TPM prohibitions that should be included in the Copyright Act? Please explain why any additional exceptions would be necessary.</p> <p>Yes. All.</p>

**Flash Langley PRELIMINARY Submission on MBIE consultation document:
Implementation of the Trans-Pacific Partnership Intellectual Property Chapter**

	Even the limited set of identified exceptions and limitations are not best practice.
6	Would there be a likely adverse impact on non-infringing uses in general if the exception for any other purpose that does not infringe copyright was not provided for? Please be specific in your answers.
	Should be no prohibitions; all exceptions allowed.
7	Should there be a regulation-making power to enable the exception for any other purpose that does not infringe copyright to be clarified, and if so, what criteria should be considered?
	Maybe, though slow and cumbersome. Fair Use needed.
Patent term extension for delays in patent grant	
8	Do you agree with the proposals for patent term extensions for unreasonable grant delays? Why / why not?
9	Do you think that there should be a limit on the maximum length of extension available for grant delays? If so, what should it be?
10	Do you consider that third parties should be able to oppose decisions to extend patents on the ground of unreasonable delays in grant?
Patent term extension for pharmaceuticals	
11	Do you agree with the proposed definition of “unreasonable curtailment” for pharmaceutical patent term extensions? If not, what other definition should be used?
12	Do you agree that the definition of “unreasonable curtailment” should apply different time periods for small molecule pharmaceuticals and biologics? If so, what could these time periods be? If you consider that only one time period should apply to both, what should this be?
13	Do you agree with the proposed method of calculating the length of extensions for

Flash Langley **PRELIMINARY** Submission on MBIE consultation document:
Implementation of the Trans-Pacific Partnership Intellectual Property Chapter

	pharmaceutical patents?
14	The proposed method of calculating extensions for pharmaceutical patents includes a maximum extension of two years. Do you agree with this? If not, what do you think the maximum extension should be?
15	Do you agree or disagree that only patents for pharmaceutical substances <i>per se</i> and for biologics should be eligible for extension? Why?
16	Do you think the Australian definition of “pharmaceutical substance” should be adopted? Why / why not?
17	Do you agree that patent rights during the extended term should be limited in the manner proposed?
18	Do you agree that third parties should be able to oppose decisions to extend patents for pharmaceuticals through the Commissioner of Patents? Why / why not?
Performers’ rights	
19	Do you agree that a performer’s moral rights should apply to both the aural and visual aspects of their live performance and of any communication of the live performance to the public? Why / why not?
20	Should performers’ moral rights apply to the communication or distribution of any recording (i.e. both sound recordings and films) made from their performances, rather than just sound recordings as required by WPPT? Why / why not?
21	Do you agree or disagree with any of the exceptions or limitations proposed for a performer’s right to be identified? Why?
22	Are there any other exceptions or limitations to a performer’s right to be identified that should be included in the Copyright Act? If so, can you please explain why they would be necessary.

**Flash Langley PRELIMINARY Submission on MBIE consultation document:
Implementation of the Trans-Pacific Partnership Intellectual Property Chapter**

23	Do you agree or disagree with providing for any of the exceptions or limitations proposed for a performer’s right to object to derogatory treatment? Why?
24	Are there any other exceptions or limitations to a performer’s right to object to derogatory treatment that should be included in the Copyright Act? If so, please explain why they would be necessary.
25	Should the new property rights for performers be extended to apply to the recording of visual performances in films? Why / why not? (Please set out the likely impacts on performers and producers, and any others involved in the creation, use or consumption of films.)
26	Do you agree or disagree with any of the exceptions or limitations proposed above? Why?
27	Are there any other exceptions or limitations to the new performers’ property rights that should be included in the Copyright Act? If so, can you please explain why they would be necessary.
28	Do you agree or disagree with any of the proposals above? Why?
29	Are there any other amendments that need to be made to the Copyright Act, and in particular to Part 9, to clarify the new performers’ property rights? If so, can you please explain why they would be necessary.
Border protection measures	
30	Do agree that Article 4 of European Union Council Regulation (EC) No 3295/94 is an appropriate model for implementing <i>ex officio</i> powers into the border protection measures set out in the Copyright Act 1994 and Trade Marks Act 2001? If not, please explain why not and outline an alternative approach to implementing <i>ex officio</i> powers.
31	Do you agree that the detention period of three business days following notification to the rights holder is appropriate? Can you outline the impact on both the right holders and any importer/exporter where you consider the period should be shorter or longer than three

Flash Langley **PRELIMINARY** Submission on MBIE consultation document:
Implementation of the Trans-Pacific Partnership Intellectual Property Chapter

business days?

Other comments